

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:

NEIGHBORS LEGACY HOLDINGS, INC.,

Debtor

CASE NO. 18-33836-H1-11

Chapter 11

MARK SHAPIRO, TRUSTEE
OF THE UNSECURED CREDITOR TRUST
OF NEIGHBORS LEGACY HOLDINGS,
INC. AND ITS DEBTOR AFFILIATES,
Plaintiff

VS.

ADV. NO. 20-03016

TOM VO, ET AL.,
Defendants

JURY DEMANDED

**ORIGINAL ANSWER OF DEFENDANT
BANKYMED EMERGENCY MANAGEMENT PLLC**

TO THE HONORABLE MARVIN ISGUR UNITED STATES BANKRUPTCY JUDGE:

Comes now Bankymed Emergency Management PLLC, a professional limited liability company chartered and existing under the laws of the State of Texas ("Bankymed"), formerly known as Bankymed Emergency Management LLC, one of the Defendants in the above numbered and titled Adversary Proceeding, and for answer to the Plaintiff's First Amended Complaint (doc 4, the "Complaint") filed by Mark Shapiro, Trustee of the Unsecured Creditor Trust of Neighbors Legacy Holdings, Inc. and its Debtor Affiliates (the "Trustee"), Bankymed respectfully represents:

Response to Jurisdiction and Venue

1. Bankymed admits paragraphs 1 through 6 of the Complaint and agrees that this Court has jurisdiction and venue to consider the Complaint as to Bankymed. Bankymed consents to the entry of final orders or judgment by this honorable Court pursuant to BLR 7008-1 and 7012-1. Bankymed does not know whether the Court has jurisdiction or venue to consider the Complaint as to Defendants other than Bankymed.

Response to Parties

2. Bankymed admits the allegation of paragraph 7 of the Complaint that the Plaintiff, Mark Shapiro, is the Trustee of the Unsecured Creditor Trust (the "Trust") of Neighbors Legacy Holdings, Inc., and its affiliates (the "Debtors").

3. Bankymed denies the allegation of paragraph 45 of the Complaint that Bankymed Emergency Management, LLC is a Texas limited liability company. On December 20, 2016, the name of Bankymed was changed to Bankymed Emergency Management PLLC and the type of entity was changed to a professional limited liability company.

4. Bankymed does not have knowledge about and is not able to either admit or deny the allegations of paragraphs 8 through 44 and 46 through 86 of the Complaint. Bankymed does not know the correct names and identity of the other defendants named in the Complaint.

Response to Background Facts

5. Bankymed does not have knowledge about and is not able to either admit or deny the allegations of paragraphs 87 through 91 of the Complaint concerning the bankruptcy cases of the Neighbors Debtor Entities, the Chapter 11 Plan, or the creation of the Unsecured Creditor Trust.

Neighbors Emergency Centers Alleged Transfers to Defendants

6. Bankymed denies the allegations of paragraphs 92 through 96 of the Complaint and demands strict proof thereof.

7. Bankymed denies that Bankymed ever made any loans to the Neighbor Debtor Entities (as that term is defined in the Complaint).

8. Bankymed denies that Bankymed was a creditor of any of the Neighbor Debtor Entities.

9. Bankymed denies that it received any payment alleged in the Amended Complaint and Exhibit A to the Amended Complaint to have been made to Bankymed.

10. Bankymed did not receive any payments or transfers from any of the debtor entities except for only NEC Port Arthur Emergency Center, LP. Bankymed denies that NEC Port Arthur Emergency Center, LP was insolvent on the dates of alleged transfers to Bankymed.

Response to Claims and Causes of Action

11. Bankymed denies the allegations of paragraphs 97 through 105 of the Complaint as they concern Bankymed, and demands strict proof thereof.

12. Bankymed does not have knowledge about and is not able to either admit or deny the allegations of paragraphs 97 through 105 of the Complaint with respect to defendants other than Bankymed.

Facts Applicable to All of the Trustee's Theories

13. Bankymed did not receive any payments or transfers from any of the debtor entities except for NEC Port Arthur Emergency Center, L.P.

14. NEC Port Arthur Emergency Center, L.P. was non insolvent on the dates of any of the alleged transfers. NEC Port Arthur Emergency, LP's Financial Statements prove that NEC Port Arthur Emergency, LP was solvent through October 31, 2017.

15. Bankymed invested \$75,000.00 to purchase a 3% limited partnership interest in NEC Port Arthur Emergency Center, L.P. The total of all payments received by Bankymed from NEC Port Arthur, LP. is less than the amount which Bankymed paid to purchase its limited partnership interest. The amount invested is value and reasonably equivalent value for the payments received.

16. NEC Port Arthur Emergency Center, L.P. is a pass through entity for federal income taxes, and did not pay taxes on its income directly to the United States Treasury. The federal income tax liability of NEC Port Arthur Emergency Center, L.P. was passed through to the limited partners in proportion to each partners' share of ownership of the limited partnership, and reported on K-1 statements to the individual partners. The money paid by NEC Port Arthur Emergency Center, L.P. to its limited partners was for the purpose and in amounts to enable each partner to pay its share of the partnership's federal income tax liability. The amounts paid to Bankymed were for that purpose, and Bankymed paid its share of the federal income tax liability the partnership to the United States Treasury with Bankymed's federal income tax returns. Payment by Bankymed of its share of the federal income tax liability of NEC Port Arthur Emergency Center, L.P. is value and reasonably equivalent value for the amounts received.

**Defenses to the Trustee's Claims for Alleged Receipt of Fraudulent Transfers
Under Bankruptcy Code Sections 548 and 550.**

17. NEC Port Arthur Emergency Center, L.P. did not make any payments or transfers to Bankymed with actual intent to hinder, delay, or defraud any entity to which NEC Port Arthur

Emergency Center, L.P. was indebted. Bankymed is not liable to the Trustee under 11 U.S.C. Section 548(a)(1)(A).

18. On the dates of the alleged transfers, and at all relevant times, NEC Port Arthur Emergency Center, LP was not insolvent, and did not become insolvent as a result of any payments or transfers to Bankymed. Bankymed is not liable to the Trustee under 11 U.S.C. Section 548(a)(1)(B)(ii).

19. NEC Port Arthur Emergency Center, LP received reasonably equivalent value in exchange for any alleged transfer to Bankymed. Bankymed invested \$75,000.00 to purchase 3 percent limited partnership interest in NEC Port Arthur Emergency Center, LP, and the amount invested is greater than the amount of any and all payments and transfers from NEC Port Arthur Emergency Center, LP to Bankymed. Bankymed is not liable to the Trustee under 11 U.S.C. Section 548(a)(1)(B)(i).

20. Bankymed gave value to NEC Port Arthur Emergency Center, LP in good faith and without knowledge that any alleged transfer to Bankymed was made by NEC Port Arthur Emergency Center, LP with actual intent to hinder, delay or defraud any creditor. Bankymed invested \$75,000.00 to purchase a 3 percent limited partnership interest in NEC Port Arthur Emergency Center, LP, and the amount invested is value from which NEC Port Arthur Emergency Center, LP benefited, and is more than the amount of all payments and transfers which Bankymed received from NEC Port Arthur Emergency Center, LP. In addition, Bankymed paid its proportionate share of federal income taxes based upon income of NEC Port Arthur Emergency Center, L.P. The Trustee's claims against Bankymed are barred by 11 U.S.C. Section 548(c) and Section 550(b).

21. The Trustee's claims against Bankymed under Bankruptcy Code Sections 548 and 550 are barred by the applicable statutes of limitations. The transfers alleged to have been made to Bankymed allegedly took place more than two years before the date on which the Debtors' petitions were filed, and The Trustee's claims against Bankymed under Sections 548 and 550 of the Bankruptcy Code are barred by the two year statute of limitations of 11 U.S.C. 548(a)(1).

**Defenses to the Trustee's Claims for Alleged Receipt of Fraudulent Transfers
Under Texas Business and Commerce Code Section 24.006**

22. Bankymed did not receive any payments or transfers from any of the debtor entities except for NEC Port Arthur Emergency Center, L.P.

23. Bankymed did not receive any payments or transfers from NEC Port Arthur Emergency Center, L.P which were made with actual intent to hinder, delay or defraud its creditors. There are no "Badges of Fraud" as set out in Tex. Bus. & Comm. Code Section 24.005(b). No Badges of Fraud are alleged in the Complaint. Bankymed is not liable to the Trustee under Tex. Bus. & Comm. Code § 24.005.

24. On the dates of the alleged transfers, and at all relevant times, NEC Port Arthur Emergency Center, LP was not insolvent, and did not become insolvent as a result of any payments or transfers to Bankymed. Bankymed is not liable to the Trustee under Tex. Bus. & Comm. Code § 24.006(a).

25. Bankymed gave reasonably equivalent value for any transfers from the Debtors. Bankymed invested \$75,000.00 to purchase a 3 percent limited partnership interest NEC Port Arthur Emergency Center LP. Bankymed's this capital contribution is "value" as defined in Tex. Bus. Comm. Code § 24.004(a) and is "reasonably equivalent value" as defined in Tex. Bus. Comm. Code § 24.004(d). Bankymed invested \$75,000 to purchase its limited partner interest in NEC Port Arthur Emergency Center LP in good faith, and any transfers made by NEC Port

Arthur Emergency Center LP to Bankymed were in good faith for value, from which NEC Port Arthur Emergency Center, LP benefited, and is more than the amount of all payments and transfers which Bankymed received from NEC Port Arthur Emergency Center, LP. In addition, Bankymed paid its proportionate share of federal income taxes based upon income of NEC Port Arthur Emergency Center, L.P. Bankymed is not liable to the Trustee under Tex. Bus.& Comm. Code § 24.009(a).

26. The Trustee's claims against Bankymed under Tex. Bus & Comm. Code § 24.006(b) are barred by the statute of limitations. For transfers to an insider which are sought to be avoided under § 24.006 (b), the statute of limitations is one year after the transfer is made. Bankymed did not receive any payments or transfers from NEC Port Arthur Emergency Center LP, or any other debtor entity, within one year before the date of the Debtors' petitions and none are alleged to have been made in the Trustee's Complaint.

COUNTER CLAIM

27. The Trustee's claims against Bankymed are without merit. Bankymed is entitled to recover its reasonable attorney's fees for defending this Complaint from the Plaintiff, the Trustee of the Unsecured Creditor Trust of Neighbors Legacy Holdings, Inc. and its Debtor Affiliates, pursuant to Tex. Bus. & Comm. Code § 24.013. A reasonable attorney's fee for Bankymed for the services of its attorneys is the sum of at least \$30,000.


PRAYER

Wherefore, premises considered, Bankymed Emergency Management PLLC prays that the Trustee take nothing from Bankymed, and that Bankymed recover its costs and reasonable attorney's fees from the Plaintiff, the Trustee of the Unsecured Creditor Trust of Neighbors

Legacy Holdings, Inc. and its Debtor Affiliates, and for such and further relief to which Bankymed may show itself to be justly entitled.

Respectfully submitted,

ROSS, BANKS, MAY, CRON & CAVIN, P.C.

By: 

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Bankymed Emergency Management PLLC

CERTIFICATE OF SERVICE

I certify that true copies of this answer were served upon the Trustee by email to the Trustee's attorney of record Clifford Walston of the law firm of Walston Bowlin, LLP, to email address cliff@walstonbowlin.com, and on all persons who have entered an appearance in this case electronically by means of the Court's CM/ECF System contemporaneously with filing.

I certify that true copies of this motion and proposed order were served upon the Trustee, the Trustee's attorney, and all of the Defendants by mailing same, properly addressed and postage prepaid, to the persons and parties whose names are set forth in the attached Mailing list.

This service was completed on June 30, 2020.



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